

HJS
Pinconning, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRI-COUNTY REFUSE SERVICES, INC. d/b/a
REPUBLIC SERVICES OF PINCONNING
Employer

and

Case 07-RC-122650

LOCAL 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS (IBT)
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held April 3, 2014, and the Regional Director's Report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 16 for and 15 against the Petitioner, with no challenged ballots.

The Board has reviewed the Regional Director's Report and the Employer's exceptions and brief, has adopted the Regional Director's findings and recommendations,¹ and finds that a certification of representative should be issued.

¹ We appreciate the value of military service and commend those who serve our country. Absent a stipulated election agreement to the contrary, however, established Board precedent provides that employees absent from work due to military service may vote only if they appear in person at the polls. See *Emil Denmark*, 121 NLRB 1370, 1372 (1958); *Wilson & Co.*, 37 NLRB 944, 951-952 (1941); see also *Coast North America (Trucking) Ltd.*, 325 NLRB 980, 981 (1998) (Like other absences beyond the control of the parties or the Board, a voter's absence due to military service does not compel a rescheduling of the election). Here, the parties agreed to a Stipulated Election Agreement specifically stating that eligible employees in military service may vote if they appear in person at the polls. We find that the Regional Director did not abuse her discretion by holding the parties to that stipulation in accordance with Board precedent. See

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 406, International Brotherhood of Teamsters (IBT), and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers and helpers (hoppers), employed by the Employer at its facility located at 2401 E. Whitefeather Road, Pinconning, Michigan; but excluding all office clerical employees, confidential employees, mechanics, dispatchers, managerial employees, and guards and supervisors as defined in the Act.

Dated, Washington, D.C., September 9, 2014

Kent Y. Hirozawa,	Member
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Harry I. Johnson, III,	Member
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Nancy Schiffer,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD

Community Care Systems, 284 NLRB 1147, 1147-1148 (1987) (importance of stipulations). In reaching that conclusion, we note that the Employer never requested a mail or absentee ballot for employee Jason Partaka, but rather sought to more fundamentally alter the previously agreed-upon election arrangements by either impounding all the ballots or rescheduling the entire election.

Member Johnson agrees that, under current Board precedent, the objection should be overruled, and feels compelled to apply such precedent here for the purposes of this case. He finds merit, however, in the Employer's argument that Board policies in this area may run afoul of the spirit, if not the letter, of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301 - 4355 (1994), and other laws and public policies designed to protect the rights of service members to vote. Moreover, the Board should remove any impediment to military service in interpreting election rules under the Act. As a result, he believes the Board in the future should provide mail ballots to employees who are unable to participate in manual ballot elections as a result of military service obligations that call them away from the workplace. As noted above, the Employer did not ask for such a ballot here, nor is there any record evidence that Mr. Partaka did, either.